

Kickapoo Operations v. Multimedia Games, Inc., 421 F.3d 1166, 1169-70 (10th Cir. 2005).

As evidenced by Young and First American Kickapoo Operations, when a district court has denied a motion for summary judgment motion of which the non-moving party had notice and several months later *sua sponte* reconsiders and grants summary judgment, undue inaction on the motion is not an issue. Therefore, the specter of division among circuits raised by Petitioner is not implicated given the procedural posture of this case. No circuit split exists such as would give this Court cause to consider this case.

CONCLUSION

For all of the foregoing reasons, the Respondent respectfully urges the Court to deny the Petition for a Writ of Certiorari.

Respectfully submitted,

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have been a reconsideration of the motion for summary judgment. First American Kickapoo Operations v. Multimedia Games, Inc., 421 F.3d 1166, 1169-70 (10th Cir. 2005). The Court found the distinction, however, immaterial in light of its conclusion that the summary judgment order was permissible from either vantage point. Id.